

NO. 83-1259

Supreme Court, U.S.  
FILED

APR 9 1984

ALEXANDER L. STEVAS  
CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1983

CITY OF FAIRMONT, a municipal corporation  
PETITIONER,

vs.

PITROLO PONTIAC-CADILLAC COMPANY  
a corporation  
and ACME LAND COMPANY, a corporation,  
RESPONDENTS.

BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

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Respondents respectfully move this Court for the entry of an ORDER denying the Petition for Writ of Certiorari filed herein by the City of Fairmont. This motion is made pursuant to Rule 24, Rules of the United States Supreme Court and is based upon all documents of record and the following argument.

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**ARGUMENT**

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**I**

Petitioner argues that the United States Supreme Court has jurisdiction to consider this appeal pursuant to 28 U.S.C.A. 1257, and likewise claim a violation by the State Supreme Court of Appeals of the Fourteenth Amendment of the United States Constitution.

Petitioner argues (page 1, second paragraph) that the decision of the West Virginia Supreme Court of Appeals has set up two classes of citizens in the City of Fairmont. One class being those who voluntarily PAID the "Fire Protection Fee" when billed by the City, and those who REFUSED to pay the fee claiming it was a TAX and as such was violative of the Tax

Limitation Act of 1932 as amended.

## II

### THE ORDINANCE

A careful reading of the ORDINANCE itself, (City Ordinance No. 221, Section 2 thereof) shows as follows:

"There is imposed and assessed upon the respective owners of all residential, commercial, industrial or other buildings of every type construction, situated within the City, \*\*\* , et'c."

Fire protection is designed to prevent injury to human beings as well as prevent damage to property as it is inevitable that fires in buildings can result in physical injury to persons.

A citizen who owns a building or buildings is classified as a user and is taxed, while a citizen who owns no building

is 'not a user and is not taxed. Hence, the rational of the ORDINANCE is that only the user is entitled to the essential service of fire protection while the citizen who owns nothing and is not taxed, is not entitled to the essential service of fire protection, but who is, nevertheless, subject to injury by fire.

The City would have this Court believe that although the ORDINANCE itself creates two classes of citizens, the property owner, vis-a-vee the non-owner, (right to protection versus no right to protection), this is equal protection, while the Supreme Court of Appeals of West Virginia in its ruling, has violated the Due Process provisions of the Constitution by creating two classes of

citizens, the ones who paid v. the ones who fought and refused to pay. Critical to any discussion of Due Process is the question of fairness of actions proposed or taken.

The City's cry that while Police Protection is designed to safeguard the person and not the property, a charge based on property value is a tax, while on the other hand arguing that Fire Protection is designed to safeguard property, thereby attempting to justify a charge based on property value, is totally inconsistent.

This proposition ignores the fact that most crimes are committed against property and that Fire Protection is designed to prevent injury to human beings, as well as damage to property. The cry of impairment of funding for Municipal Fire Departments



only emphasizes the failure of the City Government to rise to the edict established by the people and is an attempt by the City to avoid its Constitutional responsibilities.

### III

#### CONCLUSION

REVIEW by this Court is not warranted as (1) There is no Federal Question involved. (2) There is no situation of National Interest involved and (3) The decision of the West Virginia Supreme Court of Appeals is based on State Statutes (Tax Limitation Amendment of 1932) and does not involve any Federal Constitutional or Statutory Questions. This appeal should not be granted.

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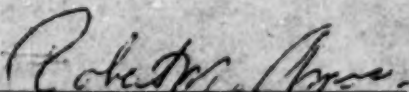
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26554  
Counsel for Respondents.



7.

CERTIFICATE OF SERVICE

I do hereby certify that a copy of  
the foregoing has been served upon GEORGE  
R. HIGINBOTHAM, Esquire, P.O. Box 567,  
Fairmont, West Virginia, 26554, this the  
26<sup>th</sup> day of March, 1984, via United States  
mail, postage prepaid.

  
Robert M. Amos